

Exhibit 514.51

7 CFR, Chapter XIV

PART 1467 - WETLANDS RESERVE PROGRAM

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**Authority:** 16 U.S.C. 590a, et seq.; 16 U.S.C. 3837, et seq.

**§ 1467.1 Applicability.**

(a) The regulations in this part set forth the policies, procedures, and requirements for the Wetlands Reserve Program (WRP) as administered by the Natural Resources Conservation Service (NRCS) for program implementation and processing outstanding and new applications for enrollment during calendar year 1995 and thereafter.

(b) The Chief, NRCS, may implement WRP in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands.

**§ 1467.2 Administration.**

(a) The regulations in this part will be administered under the general supervision and direction of the Chief.

(b) The Chief is authorized to modify or waive a provision of this part if the Chief deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the environmental and cost-efficiency goals of the WRP. This authority cannot be further delegated. The Chief may not modify or waive any provision of this part which is required

by applicable law.

(c) As determined by the Chief and the Administrator of the Farm Service Agency, the NRCS and the Farm Service Agency will seek agreement in establishing policies, priorities, and guidelines related to the implementation of this part.

(d) The State Conservationist will consult with the State Technical Committee on the development of the rates of compensation for an easement, a priority ranking process, and related policy matters.

(e) The NRCS may delegate at any time easement management, monitoring, and enforcement responsibilities to other Federal or State agencies.

(f) The Department may enter into cooperative agreements with Federal or State agencies, conservation districts, and private conservation organizations to assist the NRCS with educational efforts, easement management and monitoring, outreach efforts, and program implementation assistance.

(g) The NRCS shall consult with the U.S. Fish and Wildlife Service in the implementation of the program and in establishing program policies. The NRCS may consult with the Forest Service, other Federal and State agencies, conservation districts or other organizations in program administration. No determination by the U.S. Fish and Wildlife Service, the Forest Service, Federal or State agency, conservation district, or other organization shall compel the NRCS to take any action which the NRCS determines will not serve the purposes of the program established by this part.

(h) The Chief may allocate funds for such purposes related to: special pilot programs for wetland management and monitoring; acquisition of wetland easements with emergency funding; cooperative agreements with other Federal or State agencies for program implementation; coordination of easement enrollment across State boundaries; coordination of the development of conservation plans; or, for other goals of the WRP found in this part. The Department may designate areas as conservation priority areas where environmental concerns are especially pronounced and to assist landowners in meeting nonpoint source pollution requirements and other conservation needs.

### **§ 1467.3 Definitions.**

The following definitions shall be applicable to this part:

Agricultural commodity means any crop planted and produced by annual tilling of the soil or on an annual basis by one trip planters, or alfalfa and other multi-year grasses and legumes in rotation as approved by the Secretary. Land shall be considered planted to an agricultural commodity during a crop year if, as determined by the NRCS, an action of the Secretary prevented land from being planted to the commodity during the crop year.

Chief means the Chief of the Natural Resources Conservation Service or the person delegated authority to act for the Chief.

Commenced conversion wetland means a wetland or converted wetland for which the Farm Service Agency has determined that the wetland manipulation was contracted for, started, or for which financial obligation was incurred before December 23, 1985.

Conservation District is a subdivision of a State government organized pursuant to applicable State law to promote and undertake actions for the conservation of soil, water, and other natural resources.

Conservation Reserve Program (CRP) means the program administered by the Commodity Credit Corporation pursuant to 16 U.S.C. 3831-3836.

Contract means the document that specifies the obligations and rights of any person who has been accepted for participation in the program.

Converted wetland means a wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including the removal of woody vegetation, or any activity that results in impairing or reducing the flow, circulation, or reach of water) for the purpose, or that has the effect, of making the production of an agricultural commodity possible if such production would not have been possible but for such action.

Cost-share payment means the payment made by the Department to achieve the restoration of the wetland functions and values of the easement area in accordance with the WRPO.

Department is the United States Department of Agriculture (USDA) and includes the Commodity Credit Corporation or any USDA agency or instrumentality delegated program responsibility by the Secretary of Agriculture.

Easement means a reserved interest easement which is an interest in land defined and delineated in a deed whereby the landowner conveys all rights, title, and interests in a property to the grantee, but the landowner retains those rights, title, and interests in the property which are specifically reserved to the landowner in the easement deed.

Easement area means the land encumbered by an easement.

Easement payment means the consideration paid to a landowner for an easement conveyed to the United States under the WRP.

Farm Service Agency is an agency of the United States Department of Agriculture.

Forest Service is an agency of the United States Department of Agriculture.

Landowner means a person or persons having legal ownership of farmland, including those who may be buying farmland under a purchase agreement. Landowner may include all forms of

collective ownership including joint tenants, tenants in common, and life tenants and remaindermen in a farm property.

Lands substantially altered by flooding means areas where flooding has created wetland hydrologic conditions which, with a high degree of certainty, will develop wetland soil and vegetation characteristics over time.

Natural Resources Conservation Service (NRCS) is an agency of the United States Department of Agriculture, formerly called the Soil Conservation Service.

Permanent easement means an easement that lasts in perpetuity.

Person means an individual, partnership, association, corporation, cooperative, estate or trust, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

Practice means a restoration measure necessary or desirable to accomplish the desired program objectives.

Riparian areas mean areas of land that occur along streams, channels, rivers, and other water bodies. These areas are normally distinctly different from the surrounding lands because of unique soil and vegetation characteristics, may be identified by distinctive vegetative communities which are reflective of soil conditions normally wetter than adjacent soils, and generally provide a corridor for the movement of wildlife.

State Technical Committee means a committee established by the Secretary of the U.S. Department of Agriculture in a State pursuant to 16 U.S.C. 3861. For the purposes of the WRP, the State Conservationist will be the chairperson of the State Technical Committee.

U.S. Fish and Wildlife Service is an agency of the United States Department of the Interior.

Wetland means land that:

- (1) Has a predominance of hydric soils;
- (2) Is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
- (3) Does support a prevalence of such vegetation under normal circumstances. For purposes of WRP, wetlands shall also refer to adjacent lands that contribute to wetland functions and values.

Wetland functions and values means the hydrological and biological characteristics of wetlands and the socioeconomic value placed upon these characteristics, including:

- (1) Habitat for migratory birds and other wildlife, in particular at risk species;

- (2) Protection and improvement of water quality;
- (3) Attenuation of water flows due to flood;
- (4) The recharge of ground water;
- (5) Protection and enhancement of open space and aesthetic quality;
- (6) Protection of flora and fauna which contributes to the Nation's natural heritage; and
- (7) Contribution to educational and scientific scholarship.

Wetland restoration means the rehabilitation of degraded or lost habitat in a manner such that:

- (1) The original vegetation community and hydrology are, to the extent practical, re-established; or
- (2) A community different from what likely existed prior to degradation of the site is established. The hydrology and native self-sustaining vegetation being established will substantially replace original habitat functions and values but does not involve more than 30 percent of the wetland restoration area.

WRP means the Wetlands Reserve Program.

WRPO means the Wetlands Reserve Plan of Operations.

#### **§ 1467.4 Program requirements.**

(a) General. Under the WRP, the Department will purchase conservation easements from, or enter into restoration cost-share agreements with, eligible landowners who voluntarily cooperate in the restoration and protection of wetlands and associated lands. To participate in WRP, a landowner will agree to the implementation of a Wetlands Reserve Plan of Operations (WRPO), the effect of which is to restore, protect, enhance, maintain, and manage the hydrologic conditions of inundation or saturation of the soil, native vegetation, and natural topography of eligible lands. The Department may provide cost-share assistance for the activities that promote the restoration, protection, enhancement, maintenance, and management of wetland functions and values. Specific restoration, protection, enhancement, maintenance, and management actions may be undertaken by the landowner or other Department designee.

(b) Acreage limitations.

- (1) Except for areas devoted to windbreaks or shelterbelts after November 28, 1990, no more than 25 percent of the total cropland in any county, as determined by the Farm Service Agency, may be enrolled in the CRP and the WRP, and no more than 10 percent of

the total cropland in the county may be subject to an easement acquired under the CRP and the WRP.

(2) The NRCS and the Farm Service Agency shall concur before a waiver of either the 25 percent limit or the 10 percent limit of this subsection can be approved for an easement proposed for enrollment in the WRP. Such a waiver will only be approved if it will not adversely affect the local economy, and operators in the county are having difficulties complying with the conservation plans implemented under 16 U.S.C. 3812.

(c) Landowner eligibility. The NRCS may determine that a person is not eligible to participate in the WRP or receive any WRP payment because the person did not comply with the provisions of 7 CFR part 12. To be eligible to enroll an easement in the WRP, a person must:

(1) Be the landowner of eligible land for which enrollment is sought;

(2) Have been the landowner of such land for the 12 months prior to the time the intention to participate is declared unless it is determined by the State Conservationist that the land was acquired by will or succession as a result of the death of the previous landowner, or that adequate assurances have been presented to the State Conservationist that the new landowner of such land did not acquire such land for the purpose of placing it in the WRP; and,

(3) Agree to provide such information to the Department as the agency deems necessary or desirable to assist in its determination of eligibility for program benefits and for other program implementation purposes.

(d) Eligible land.

(1) The NRCS shall determine whether land is eligible for enrollment and whether, once found eligible, the lands may be included in the program based on the likelihood of successful restoration of wetland functions and values when considering the cost of acquiring the easement and restoration, protection, enhancement, maintenance, and management costs.

(2) Land shall only be considered eligible for enrollment in the WRP if the NRCS determines, in consultation with the U.S. Fish and Wildlife Service, that:

(i) Such land maximizes wildlife benefits and wetland values and functions;

(ii) The likelihood of the successful restoration of such land and the resultant wetland values merit inclusion of such land in the program, taking into consideration the cost of such restoration; and

(iii) Such land meets the criteria of paragraph (d)(3) of this section,

(3) The following land may be eligible for enrollment in the WRP, which land may be identified by the NRCS pursuant to regulations and implementing policies pertaining to wetland conservation found at 7 CFR part 12, as:

- (i) Wetlands farmed under natural conditions, farmed wetlands, prior converted cropland, commenced conversion wetlands, farmed wetland pastures, and lands substantially altered by flooding so as to develop wetland functions and values;
- (ii) Former or degraded wetlands that occur on lands that have been used or are currently being used for the production of food and fiber, including rangeland and forest production lands, where the hydrology has been significantly degraded or modified and will be substantially restored;
- (iii) Riparian areas along streams or other waterways that link or, after restoring the riparian area, will link wetlands which are protected by an easement or other device or circumstance that achieves the same objectives as an easement;
- (iv) Land adjacent to the restored wetland which would contribute significantly to wetland functions and values including buffer areas, wetland creations, and non-cropped natural wetlands, but not more than the State Conservationist, in consultation with the State Technical Committee, determines is necessary for such contribution;
- (v) Other wetlands that would not otherwise be eligible but would significantly add to the wetland functions and values; and,
- (vi) Wetlands that have been restored under a private, State, or Federal restoration program with an easement or deed restriction with a duration of less than 30 years.

(4) To be enrolled in the program, eligible land must be configured in a size and with boundaries that allow for the efficient management of the area for easement purposes and otherwise promote and enhance program objectives.

(e) Ineligible land. The following land is not eligible for enrollment in the WRP:

- (1) Converted wetlands if the conversion was commenced after December 23, 1985;
- (2) Land that contains timber stands established under a CRP contract or pasture land established to trees under a CRP contract;
- (3) Lands owned by an agency of the United States;
- (4) Land subject to an easement or deed restriction with a duration of 30 years or more prohibiting the production of agricultural commodities; and,
- (5) Lands where implementation of restoration practices would be futile due to on-site or off-site conditions.

(f) Enrollment of CRP lands. Land subject to an existing CRP contract may be enrolled into the WRP only if the land and landowner meet the requirements of this part, and the enrollment is requested by the landowner and agreed to by the NRCS. To enroll in WRP, the CRP contract for the property shall be terminated or otherwise modified subject to such terms and conditions as are mutually agreed upon by the Farm Service Agency and the landowner.

#### **§ 1467.5 Application procedures.**

(a) Application for participation. To apply for enrollment, a landowner must submit an Application for Participation in the WRP. The application must be submitted during an announced period for such submissions.

(b) Preliminary agency actions. By filing an Application for Participation, the landowner consents to an NRCS representative entering upon the land for purposes of assessing the wetland functions and values, and for other activities such as the development of the preliminary WRPO that are necessary or desirable for the NRCS to make offers of enrollment. The landowner is entitled to accompany an NRCS representative on any site visits.

(c) Voluntary reduction in compensation. In order to enhance the probability of enrollment in WRP, a landowner may voluntarily offer to accept a lesser payment than is being offered by the Department.

#### **§ 1467.6 Establishing priority for enrollment of properties in WRP.**

(a) The NRCS shall place priority on the enrollment of those lands that will maximize wildlife values (especially related to enhancing habitat for migratory birds and other wildlife); have the least likelihood of re-conversion and loss of these wildlife values at the end of the WRP enrollment period; and that involve State, local, or other partnership matching funds and participation.

(b) Ranking considerations. Based on applications for participation, the State Conservationist, in consultation with the U.S. Fish and Wildlife Service and the State Technical Committee, will rank properties based on: estimated costs of restoration and easement acquisition, availability of matching funds, significance of wetland functions and values, estimated success of restoration measures, and the duration of a proposed easement with permanent easements being given priority over non-permanent easements.

(c) The NRCS may place higher priority on certain geographic regions of the State where restoration of wetlands may better achieve NRCS State and regional goals and objectives.

(d) Notwithstanding any limitation of this part, the State Conservationist may enroll eligible lands at any time in order to encompass total wetland areas subject to multiple ownership or otherwise to achieve program objectives. Similarly, the State Conservationist may, at any time, exclude otherwise eligible lands if the participation of the adjacent landowners is essential to the successful restoration of the wetlands and those adjacent landowners are unwilling to participate.



#### **§ 1467.7 Enrollment of easements.**

(a) Offers of enrollment. Based on the priority ranking, the Department will notify an affected landowner of tentative acceptance into the program for which the landowner has 15 calendar days to sign a letter of intent to continue. The Department will select lands to maximize environmental benefits per expenditure of Federal funds.

(b) Effect of letter of intent to continue (enrollment). An offer of tentative acceptance into the program does not bind the Department or the United States to acquire an easement, nor does it bind the landowner to convey an easement or agree to WRPO activities. However, receipt of an executed letter of intent to continue will authorize the Department to proceed.

(c) Acceptance of offer of enrollment. A contract will be presented by the Department to the landowner, which will describe the easement area; the easement terms and conditions; and other terms and conditions for participation that may be required by the Department. A landowner accepts enrollment in the WRP by signing contract.

(d) Effect of the acceptance of the offer. After the contract is executed by the Department and the landowner, the Department will proceed with various easement acquisition activities, which may include conducting a survey of the easement area, securing necessary subordination agreements, procuring title insurance, and conducting other activities necessary to record the easement or implement the WRPO.

(e) Withdrawal of offers. Prior to execution by the United States and the landowner of the contract, the Department may withdraw its offer anytime due to availability of funds, inability to clear title, or other reasons. The offer to the landowner shall be void if not executed by the landowner within the time specified. The date of the offer shall be the date of notification to the landowner of tentative acceptance.

#### **§ 1467.8 Compensation for easements.**

(a) Establishment of rates.

(1) The State Conservationist, in consultation with the State Technical Committee, shall determine easement payment rates to be applied to specific geographic areas within the State or to individual easement areas.

(2) In order to provide for better uniformity among States, the Regional Conservationist and Chief may review and adjust, as appropriate, State or other geographically based easement payment rates.

(b) Determination of easement payment rates.

(1) Easement payment rates will be based upon analyses of the values of the lands when used for agricultural purposes. The landowner will receive the lesser of the following:

- (i) the geographic area rate;
- (ii) the value based on a market appraisal analysis/assessment; or
- (iii) the landowner offer.

(2) Each State Conservationist will determine the easement payment rates using the best information which is readily available in that State for assessing the values of land for agricultural purposes. Such information may include: soil types, type(s) of crops capable of being grown, production history, location, real estate market values, appraisals and market analyses, and tax rates and assessments. The State Conservationist may consult with other Federal agencies, real estate market experts, appraisers, local tax authorities, and other entities or persons which may provide information on productivity and market conditions.

(3) Easement payments for non-permanent easements will be less than those for permanent easements because the quality and duration of the ecological benefits derived from a non-permanent easement are significantly less than those derived from a permanent easement on the same land. Additionally, the economic value of the easement interests being acquired is less for a non-permanent easement than that associated with a permanent easement. An easement payment for the short-term 30-year easements shall be not less than 50 percent nor more than 75 percent of that which would have been paid for a permanent easement.

(c) Maximum payments. In order to ensure that limited program funds are expended to maximize program benefits, the State Conservationist, in consultation with the State Technical Committee, may establish a maximum easement payment for any one easement within a State or for geographic areas within a State.

(d) Preliminary estimates of easement payments. Upon request of the landowner prior to filing an application for enrollment, a landowner may be apprised of the maximum easement payment rates.

(e) Acceptance of offered easement compensation.

(1) The Department will not acquire any easement unless the landowner accepts the amount of the easement payment which is offered by the Department. The easement payment may or may not equal the fair market value of the interests and rights to be conveyed by the landowner under the easement. By voluntarily participating in the program, a landowner waives any claim to additional compensation based on fair market value.

(2) Annual easement payments may be made in no less than 5 annual payments and no more than 30 annual payments of equal or unequal size .

(f) Reimbursement of a landowner's expenses. For completed easement conveyances, the Department will reimburse landowners for their fair and reasonable expenses, if any, incurred for surveying and related costs, as determined by the Department. The State Conservationist, in

consultation with the State Technical Committee, may establish maximum payments to reimburse landowners for reasonable expenses.

(g) Tax implications of easement conveyances. Subject to applicable regulations of the Internal Revenue Service, a landowner may be eligible for a bargain sale tax deduction which is the difference between the fair market value of the easement conveyed to the United States and the easement payment made to the landowner. The Department disclaims any representations concerning the tax implications of any easement or cost-share transaction.

(h) Payment limitation on non-permanent easements. With respect to non-permanent easements, the annual amount of easement payments to any person may not exceed \$50,000, except for:

(1) Payments made pursuant to projects involving partnership funding or participation; or

(2) Payments received by a State, political subdivision, or agency thereof in connection with agreements entered into under a special wetland and environmental enhancement program carried out by that entity that has been approved by NRCS.

(i) Per acre payments. If easement payments are calculated on a per acre basis, adjustment to stated easement payment will be made based on final determination of acreage.

#### **§ 1467.9 Cost-share payments.**

(a) The Department may share the cost with landowners of restoring the enrolled land as provided in the WRPO. The amount and terms and conditions of the cost-share assistance shall be subject to the following restrictions on the costs of establishing or installing practices specified in the WRPO:

(1) On enrolled land subject to a permanent easement, the Department shall offer to pay not less than 75 percent nor more than 100 percent of such costs; and

(2) On enrolled land subject to a non-permanent easement or restoration cost-share agreement, the Department shall offer to pay not less than 50 percent nor more than 75 percent of such costs. Restoration cost-share payments offered by NRCS for the short-term, 30-year easements shall be 50 to 75 percent.

(b) Cost-share payments may be made only upon a determination by the NRCS that an eligible practice or an identifiable unit of the practice has been established in compliance with appropriate standards and specifications. Identified practices may be implemented by the landowner or other designee.

(c) Cost-share payments may be made for the establishment and installation of additional eligible practices, or the maintenance or replacement of an eligible practice, but only if NRCS determines the practice is needed to meet the objectives of the easement, and the failure of the original practices was due to reasons beyond the control of the landowner.

(d) A landowner may seek additional cost-share assistance from other public or private organizations as long as the activities funded are in compliance with this part. In no event shall the landowner receive an amount which exceeds 100 percent of the total actual cost of the restoration.

**§ 1467.10 Easement participation requirements.**

(a) To enroll land in WRP, a landowner shall grant an easement to the United States. The easement shall require that the easement area be maintained in accordance with WRP goals and objectives for the duration of the term of the easement, including the restoration, protection, enhancement, maintenance, and management of wetland and other land functions and values.

(b) For the duration of its term, the easement shall require, at a minimum, that the landowner, and the landowner's heirs, successors and assigns, shall cooperate in the restoration, protection, enhancement, maintenance, and management of the land in accordance with the easement and with the terms of the WRPO. In addition, the easement shall grant to the United States, through the NRCS:

(1) A right of access to the easement area;

(2) The right to permit compatible uses of the easement area, including such activities as hunting and fishing, managed timber harvest, or periodic haying or grazing, if such use is consistent with the long-term protection and enhancement of the wetland resources for which the easement was established;

(3) All rights, title and interest in the easement area subject to compatible uses reserved to the landowner; and,

(4) The right to perform restoration, protection, enhancement, maintenance, and management activities on the easement area.

(c) The landowner shall convey title to the easement which is acceptable to the NRCS. The landowner shall warrant that the easement granted to the United States is superior to the rights of all others, except for exceptions to the title which are deemed acceptable by the NRCS.

(d) The landowner shall:

(1) Comply with the terms of the easement;

(2) Comply with all terms and conditions of any associated contract;

(3) Agree to the permanent retirement of any existing cropland base and allotment history for the easement area under any program administered by the Secretary, as determined by the Farm Service Agency;

(4) Agree to the long-term restoration, protection, enhancement, maintenance, and management of the easement in accordance with the terms of the easement and related agreements;

(5) Have the option to enter into an agreement with governmental or private organizations to assist in carrying out any landowner responsibilities on the easement area; and,

(6) Agree that each person who is subject to the easement shall be jointly and severally responsible for compliance with the easement and the provisions of this part and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the easement or the provisions of this part.

#### **§ 1467.11 The WRPO development.**

(a) The development of the WRPO shall be made through the local NRCS representative, in consultation with the State Technical Committee and with consideration of site specific technical input from the U.S. Fish and Wildlife Service and the Conservation District.

(b) The WRPO shall specify the manner in which the enrolled land shall be restored, protected, enhanced, maintained, and managed to accomplish the goals of the program. The WRPO shall be developed to ensure that cost-effective restoration and maximization of wildlife benefits and wetland functions and values will result.

#### **§ 1467.12 Modifications.**

(a) Easements.

(1) After an easement has been recorded, no modification will be made in the easement except by mutual agreement with the Chief and the landowner. The Chief will consult with the U.S. Fish and Wildlife Service and the Conservation District prior to making any modifications to easements.

(2) Approved modifications will be made only in an amended easement which is duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation.

(3) The Chief may approve modifications to facilitate the practical administration and management of the easement area or the program so long as the modification will not adversely affect the wetland functions and values for which the easement was acquired.

(4) Modifications must result in equal or greater environmental and economic values to the United States.

(b) WRPO. Insofar as is consistent with the easement and applicable law, the State Conservationist may approve modifications to the WRPO that do not affect provisions of the easement in consultation with the landowner and the State Technical Committee and following

consideration of site specific technical input from the U.S. Fish and Wildlife Service and the Conservation District. Any WRPO modification must meet WRP program objectives, and must result in equal or greater wildlife benefits, wetland functions and values, ecological and economic values to the United States. Modifications to the WRPO which are substantial and affect provisions of the easement will require agreement from the landowner and require execution of an amended easement.

#### **§ 1467.13 Transfer of land.**

(a) Offers voided. Any transfer of the property prior to the landowner acceptance into the program shall void the offer of enrollment. At the option of the State Conservationist, an offer can be extended to the new landowner if the new landowner agrees to the same or more restrictive easement and contract terms and conditions.

(b) Payments to landowners.

(1) For easements with multiple annual payments, any remaining easement payments will be made to the original landowner unless the Department receives an assignment of proceeds.

(2) The new landowner or purchaser shall be held responsible for assuring completion of all measures and practices required by the contract. Eligible cost-share payments shall be made to the new landowner upon presentation of an assignment of rights or other evidence that title had passed.

(c) Claims to payments. With respect to any and all payments owed to landowners, the United States shall bear no responsibility for any full payments or partial distributions of funds between the original landowner and the landowner's successor. In the event of a dispute or claim on the distribution of cost-share payments, the Department may withhold payments without the accrual of interest pending an agreement or adjudication on the rights to the funds.

#### **§ 1467.14 Violations and remedies.**

(a) In the event of a violation of the easement or any contract directly involving the landowner, the landowner shall be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as the State Conservationist may allow.

(b) Notwithstanding paragraph (a) of this section, the NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of the NRCS when such actions are deemed necessary to protect important wetland functions and values or others rights of the United States under the easement. The landowner shall be liable for any costs incurred by the United States as a result of the landowner's negligence or failure to comply with easement or contractual obligations.

(c) In addition to any and all legal and equitable remedies as may be available to the United States under applicable law, the Department may withhold any easement and cost-share payments owing to landowners at any time there is a material breach of the easement covenants or any contract. Such withheld funds may be used to offset costs incurred by the United States in any remedial actions or retained as damages pursuant to court order or settlement agreement.

(d) The United States shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

#### **§ 1467.15 Payments not subject to claims.**

Any cost-share or easement payment or portion thereof due any person under this part shall be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

#### **§ 1467.16 Assignments.**

Any person entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

#### **§ 1467.17 Appeals.**

(a) A person participating in the WRP may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR part 614.

(b) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision shall be a final agency action except a decision of the Chief of NRCS under these procedures.

(c) Any appraisals, market analysis, or supporting documentation that may be used by the Department in determining property value are considered confidential information, and shall only be disclosed as determined at the sole discretion of the Department in accordance with applicable law.

#### **§ 1467.18 Scheme and device.**

(a) If it is determined by the Department that a landowner has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such landowner during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by the Department.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A landowner who succeeds to the responsibilities under this part shall report in writing to the Department any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

Signed at Washington, D.C. on August 8, 1996.

Paul Johnson,

Chief, Natural Resources Conservation Service, Vice President, Commodity  
Credit Corporation.

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